

## **Environmental Hearings**

1. Held at the Department of Code Enforcement in the Tarkington Conference Room at 1200 Madison Ave., Indianapolis, IN 46225.
2. Open to the Public.
3. First-come, first-serve basis.
4. The maximum penalty which may be assessed is \$2,500.00 per violation per day.
5. The Administrative Hearing will be before an Administrative Hearing Officer, pursuant to Article V of Section 103 of the Revised Code of Indianapolis and Marion County.
6. The purpose of the hearing is to give the recipient of the Notice of Violation or his/her legal counsel the opportunity to present written and oral evidence, cross-examine witnesses and present arguments relevant to the violations alleged in the Notice of Violation.
7. The City of Indianapolis, by its Department of Public Works and its Department of Code Enforcement, Bureau of Environmental Services, has the burden of proving at the hearing that the alleged violations occurred.
8. If you or your representative does not appear at the hearing, the matter may be determined in your absence and a fine not to exceed \$2,500.00 per violation per day may be assessed against you.
9. If you have any questions about the hearing or the Notice of Violation, please contact the Administrator, Bureau of Environmental Services, Department of Code Enforcement, 1200 Madison Avenue, Suite 100, Indianapolis, Indiana, 46225, 317-327-3927.

### **10. Hearing Procedures**

#### **Sec. 103-505. Prehearing procedures.**

- (a) Prior to the hearing, the hearing officer shall give the parties an opportunity to file documents or motions regarding matters such as continuances, discovery, and any other preliminary matters. At the time of filing, a party shall serve a copy of all filed items on each other party.
- (b) Motions for continuance shall be filed no later than seven (7) days before the date assigned for the hearing, unless the reason therefore is shown by affidavit to have occurred within the seven-day period.
- (c) The hearing officer, upon request by any party or upon the hearing officer's own

- initiative, may issue subpoenas and discovery orders in accordance with the rules of procedure governing subpoenas and discovery in judicial proceedings. The party seeking the subpoena or order shall cause them to be served in accordance with these rules of procedure.
- (d) The hearing officer, upon request by any party or upon the hearing officer's own initiative, may direct the parties to negotiate a compliance agreement under section 103-506 in lieu of conducting a hearing. If the parties are unable to reach a mutually acceptable compliance agreement within a reasonable period of time, the hearing officer may proceed with hearing procedures. (G.O. 181, 1997, § 1)

**Sec. 103-506. Compliance agreements.**

The parties may elect to negotiate a compliance agreement which establishes a program and schedule to attain and maintain compliance, penalties and other provisions necessary to ensure compliance. The compliance agreement shall take effect upon approval by the hearing officer. (G.O. 181, 1997, § 1)

**Sec. 103-507. Hearing procedures.**

- (a) The hearing officer shall afford all parties the opportunity to participate in the hearing to the extent necessary for full consideration of all relevant facts and issues. A party may present evidence in the form of testimony, affidavits and documentation, engage in argument, and conduct cross-examination. A party may participate in person or by counsel at the party's own expense; if the party is not an individual or is incompetent to participate, then the party shall participate by a duly authorized representative.
- (b) The city shall have the burden of proving the environmental violation and the burden may be sustained by a preponderance of the evidence.
- (c) The hearing officer shall conduct the hearing in an informal manner and without strict adherence to the technical rules of evidence and procedure which govern judicial proceedings. The hearing officer shall rule on the admissibility of any offer of proof, and on other motions, and shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds. The testimony of each party and witness shall be made under oath or affirmation.
- (d) The hearing officer may take official notice of any section of the Code, and any law or fact that could be judicially noticed in the courts.
- (e) The hearing officer shall cause an audio recording of the hearing to be made at the expense of the city. (G.O. 181, 1997, § 1; G.O. 38, 2007, § 4)

**Sec. 103-508. Stipulated penalties.**

The decision of the hearing officer or the compliance agreement approved by the hearing officer may require the payment of stipulated penalties if the terms of the decision or compliance agreement are violated. The stipulated penalties for each violation shall not exceed:

- (1) The penalty amounts described in section 511-607 for violations of chapter 511 of

this Code; or

(2) Two thousand five hundred dollars (\$2,500.00) for all other violations. (G.O. 181, 1997, § 1; G.O. 15, 2009, § 6)

**Sec. 103-509. Decision.**

- (a) Upon the conclusion of each hearing or within a maximum of forty-five (45) days after conclusion of each hearing the hearing officer shall render a decision which shall include a determination whether the respondent violated the ordinance as alleged, the amount of civil penalty that must be paid for each violation with instructions on when and how payment shall be made, and a statement of the parties' right to petition for review of the decision. The penalties for each violation shall not exceed:
  - (1) The penalty amounts described in section 511-607 for violations of chapter 511 of this Code; or
  - (2) Two thousand five hundred dollars (\$2,500.00) for all other violations.
- (b) The hearing officer's decision may include an order affirming, modifying or revoking any order issued by DPW with the notice of violation or directing the abatement or cessation of the action described in the notice of violation.
- (b) The hearing officer's decision may include a compliance order, establishing a program and schedule to attain and maintain compliance, stipulated penalties, and other provisions necessary to ensure compliance.
- (c) The decision shall be based exclusively upon the evidence of record in the hearing and on matters officially noticed therein. The hearing officer's experience and specialized knowledge may be used in the evaluation of the evidence.
- (d) The hearing officer shall cause each decision rendered pursuant to this section to be memorialized on a minute sheet or similar written entry into the record. A copy of the minute sheet or similar written entry shall be served upon the parties by United States mail or personal service.
- (e) A decision rendered pursuant to this section may be modified by the hearing officer who rendered it, upon the hearing officer's own initiative or by motion of any party. Any motion to modify a decision shall be filed by a party within thirty (30) days after the date of the decision. (G.O. 181, 1997, § 1; G.O. 38, 2007, § 4; G.O. 15, 2009, § 6)

**Sec. 103-510. Record of the hearing.**

The record of each hearing under this article consists of the following:

- (1) The notice of hearing;
- (2) The notice of violation, if any;
- (3) Any documents, motions, or exhibits filed or entered into evidence;
- (4) Any written orders, subpoenas, and decision of the hearing officer;
- (5) Any compliance agreement negotiated by the parties and approved by the hearing officer or issued by the hearing officer as part of the decision; and

(6) The audio recording of the hearing and a written transcript of same; and shall constitute the complete and exclusive record for review of a hearing officer's decision. (G.O. 181, 1997, § 1; G.O. 38, 2007, § 4)

**Sec. 103-511. Written transcript of hearing; preparation and cost.**

At the written request of respondent, DPW or the department of waterworks shall provide a written transcript of the audio tape recording of the hearing. Respondent shall pay DPW or the department of waterworks the reasonable cost of preparing the written transcript, unless respondent files with the hearing officer under oath and in writing, a statement of indigency as described in IC 33-37-3-2. Respondent may cause to be prepared, at his own expense, a written transcript which DPW or the department of waterworks shall review and certify as to accuracy. (G.O. 181, 1997, § 1; G.O. 2007, § 4; G.O. 15, 2009, § 7)

**Sec. 103-512. Petition for review of decision; time limitation.**

- (a) A verified petition for review of the decision of a hearing officer, stating the alleged error and any factual or legal basis therefore, may be filed in the circuit or superior court of Marion County within sixty (60) days after the day on which the decision is rendered and recorded into the record by a minute sheet or similar written entry. A party who does not file an appeal within this time period forfeits the right to appeal.
- (b) Any party who files a verified petition for review shall within fifteen (15) days thereafter secure from the hearing officer a certified copy of the record of the hearing, and file the same with the clerk of the court.
- (c) An extension of time within which to file the record may be granted by the court upon a showing of good cause, which shall include the petitioner's inability to obtain the certified copy of the record within fifteen (15) days.
- (d) The failure of a party to file a certified copy of the record or to secure an extension of time therefore shall be cause for dismissal of the petition for review upon motion of any party of record. (G.O. 181, 1997, § 1)

**Sec. 103-513. Exemption from sunset provision of section 147-13 of the Revised Code.**

This article and all its provisions are exempt from the requirement of section 147-13 of the Revised Code of the Consolidated City and County that new chapters, or substantial revisions of existing chapters, expire on a specific date within five (5) years of the date of adoption.